Supreme Court, U.S.
FILED

(D)

No. 01 440 MAY 31 2001

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In The Supreme Court of the United States

JAMES BLACK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Steven B. Ward
Attorney at Law
400 Main Street
Madisonville, TN 37354
(423) 442-5800

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

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QUESTION PRESENTED

Whether 18 U.S.C. §922(g)(1) which prohibits possession of ammunition by a convicted felon is constitutional in its application to the Petitioner who lived in a house inherited from his parents which had old ammunition in it, without any showing of intent of the Petitioner to use such ammunition.

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This Court should review the Important Question of Whether 18 U.S.C. §922(g)(1) is over-broad in its prohibition of possession of ammunition by a convicted felon as applied to the Petitioner in the current case.

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Appendix A - Opinion and Judgment of the United States Court of Appeals for the Sixth Circuit Dated, Decided and Filed March 2, 2001.

Petitioner respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit (App. 1a) is unreported.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit (App. 1a) was entered on March 2, 2001.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves 18 U.S.C. §922(g)(1), which states:

> It shall be unlawful for any person ... who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

The Bureau of Alcohol, Tobacco and Firearms and the Madisonville Police Department executed a search warrant at the residence of the Petitioner on May 1, 1998. The Petitioner shared this residence with his girlfriend. It was formerly the residence of the Petitioner's father until he was placed in a nursing home.

Upon searching the residence, officers found a .380 semi-automatic pistol, ammunition that would fit the weapon, and old miscellaneous ammunition in a box in the hall closet.

At the trial of the Petitioner, Detective Matt Conley testified to finding the .380 pistol and loose rounds of ammunition on the dresser.

Officer Chris Wilburn testified that the older type ammunition was found in an older, stained wooden box. He further testified that the ammunition looked like it could have been there for years.

The Petitioner testified that his father had lived in the house until he got sick. He testified that the wooden box belonged to his mother, years ago. He further stated that he did not handle the box.

He further testified that when he found out his girlfriend had gotten a gun, he told her he could not be around one.

On cross-examination, the Government elicited testimony from the Petitioner that an individual claimed that Petitioner had a gun in order to get an Order of Protection against the Petitioner.

REASON FOR GRANTING THE WRIT

This Court should review the Important Question of Whether 18 U.S.C. §922(g)(1) is over-broad in its prohibition of possession of ammunition by a convicted felon as applied to the Petitioner in the current case.

The Court of Appeals held that, "In light of this broad notion of possession, there is little doubt that, viewing the evidence in the light most favorable to the government, there was enough evidence for a rational trier of fact to find Black guilty of possession of ammunition in violation of §922(g)(1)." App.1 p.4. That is precisely the issue. The Court had to take an overly broad view of possession to consider the Petitioner guilty.

Petitioner, under this reading of the statute, was guilty as soon as he moved into his parents' house. If he had attempted to remove the ammunition from the residence and had been stopped by authorities, he would have been guilty. By allowing it to sit there and not get rid of the ammunition, he was guilty. The only way to avoid guilt was to not take possession of the house.

The Petitioner had a right to take possession of the house. The application of this statute to Petitioner in this context was over-broad.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

Steven B. Ward
Attorney for Petitioner
400 Main Street
Madisonville, TN 37354
(423) 442-5800

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari have Been served upon the Office of the Solicitor General by placing said copies in the U. S. Mail, with sufficient Postage thereon to carry the same to its destination.

This, the 7TH day of SEPTEMBER, 2001.

Steven B. Ward
Attorney for Petitioner
400 Main Street
Madisonville, TN 37354
(423) 442-5800
No. 99-5470